In the Supreme Court of the United States

OCTOBER TERM, 1933

No. ——

THE UNITED STATES OF AMERICA, APPELLANT

v.

BYRUM GIBSON AND CLAUDE CHAMBERS

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

STATEMENT OF JURISDICTION

In compliance with Rule 12 of the Supreme Court of the United States, appellant submits herewith its statement showing the basis of the jurisdiction of this Court to entertain the appeal in the above-entitled cause:

A

STATUTES

The statutory jurisdiction of this Court to review by direct appeal the order here complained of is conferred by the Act of March 2, 1907, c. 2564, 34 Stat. 1246 (U.S.C., Title 18, Sec. 682), otherwise known as the Criminal Appeals Act, and by Section 238 of the Judicial Code as amended by the Act of February 13, 1925, c. 229, 43 Stat. 938 (U.S.C., Title 28, Sec. 345).

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B

DATES OF ORDER AND APPLICATION FOR APPEAL

The order of the District Court was entered December 6, 1933. An application for appeal was filed December 12, 1933, and allowed December 12, 1933.

C

NATURE OF THE CASE

One count of the indictment in this case was based upon Section 37 of the Criminal Code (U.S.C., Title 18, Sec. 88) and charged a conspiracy to manufacture, possess, sell and transport intoxicating liquor in violation of the National Prohibition Act.

The other counts of the indictment were based upon Section 3, Title II of the National Prohibition Act, c. 85, 41 Stat. 305, 308 (U.S.C., Title 27, Sec. 12), as amended and supplemented, c. 29, 46 Stat. 1036 (U.S.C. Supp. VI, Title 27, Sec. 91), and charged in separate counts the unlawful transportation and possession of intoxicating liquor, it being further alleged that each of said defendants named had theretofore been convicted of similar offenses and that this was the second offense of the same kind committed by each of them.

The defendant Claude Chambers on December 6, 1933, after a plea of guilty, filed what he termed a "plea in abatement", in which he objected to the court entering any judgment in the case for the reason:

> That Amendment No. 18 of the Constitution of the United States of America and all laws passed in conformity therewith have been repealed and there is no law of the United States of America constituting the allegations of the indictment herein, to which this defendant has pleaded guilty, a crime for which there is prescribed by the law any punishment, and that the Court has no jurisdiction to proceed to judgment and that the defendant be discharged.

The defendant Byrum Gibson on December 6, 1933, demurred to the indictment on the ground:

> That the indictment does not set forth facts which constitute a crime under the Constitution and the Statutes of the United States of America in that the 18th Amendment of the Constitution and the Statutes passed by the Congress of the United States have been repealed and that the allegations of the said indictment do not constitute a crime against the laws of the United States of America, and that this Court has no jurisdiction to proceed to trial and that this indictment be dismissed.

On December 6, 1933, the District Court dismissed the indictment, treating the defendants' pleadings as motions to dismiss. In an opinion rendered at the same time the court held that it now had no power to hear and determine cases involving the violation of the National Prohibition Act as amended and supplemented or to impose sentences for violations of such Act, for the reason

that the repeal of the Eighteenth Amendment to the Constitution of the United States by the adoption of the Twenty-first Amendment of the Constitution deprived the National Prohibition Act and its amendments and supplements of any further force and effect, and had the effect of releasing and extinguishing all penalties and criminal liabilities incurred thereunder.

D

CASES SUSTAINING JURISDICTION

In this case, the action of the District Court in dismissing the indictment is clearly based upon the invalidity of the statute upon which the indictment was founded. While the plea of the defendant Chambers was entitled a "Plea in Abatement", the record shows that prior to the time it was filed the defendant had pleaded guilty, and that the purpose of his plea was to arrest the judgment which the court would ordinarily have entered upon his plea of guilty. It is, therefore, submitted that jurisdiction of this appeal may, insofar as the defendant Chambers is concerned, be sustained under the third paragraph of the Criminal Appeals Act, which permits a direct appeal to this Court from "a decision arresting a judgment of conviction for insufficiency of the indictment, where such decision is based upon the invalidity or construction of the statute upon which the indictment is founded." We also think that jurisdiction of the appeal may, so far as Chambers is concerned, be sustained upon

the ground that it was a "decision or judgment sustaining a special plea in bar, when the defendant has not been put in jeopardy." The contents of the plea shows that it sought, not merely an abatement of the indictment, but a complete bar to any further proceedings for the offense charged. Cf. *United States* v. *Storrs,* 272 U.S. 652, 654. See *United States* v. *Goldman,* 277 U.S. 229, 236; *United States* v. *Thompson,* 251 U.S. 407; *United States* v. *Oppenheimer,* 242 U.S. 85; *United States* v. *Celeatine,* 215 U.S. 278; *United States* v. *Murdock,* 284 U.S. 141.

The District Court's decision sustaining the demurrer of the defendant Byrum Gibson and dismissing the indictment as to him is reviewable under the second paragraph of the Criminal Appeals Act, which permits a direct appeal "from a decision or judgment quashing, setting aside, or sustaining a demurrer to, any indictment, or any count thereof, where such decision or judgment is based upon the invalidity, or construction of the statute upon which the indictment is founded." See also *United States* v. *Sprague,* 282 U.S. 716.

Respectfully submitted.

J. CRAWFORD BIGGS,
Solicitor General.

DECEMBER, 1933.

U. S. GOVERNMENT PRINTING OFFICE: 1933